

Remarks

This Amendment is in response to the Office Action dated **May 10, 2010**. The Office Action is Final. Claims 26-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hillstead (US Pat. No. 5019085) in view of Kanazawa (JP 07024072).

By this Amendment, claims 26 and 36 are amended, and claim 38 has been added (and is discussed in greater detail below). Claim 36 is amended to correct a typographic error contained in the original claim. Reconsideration in view of the amendments and the following remarks is respectfully requested.

Claim Rejection- 35 U.S.C. §103

In the application, claim 26 is an independent claim, and claims 27-36 are dependent claims over claim 26. The Office Action asserts that Hillstead discloses "a helically wound wire defining a plurality of wire waves wherein said wire waves are longitudinally nested within each other." (Emphasis added, Office Action, pg. 2) The Office Action further asserts:

[t]he term "nested" as used in the claims must be given its broadest, reasonable interpretation. Absent an explicit definition provided by the specification stating that "nested" means a peak-to-peak amplitude of longitudinally adjacent windings that is less than 2A, these details from the specification may not be read into the claim.

(Office Action, pg. 3) This assertion is traversed.

The claim terms must be "given their broadest reasonable interpretation consistent with the specification." (Emphasis added) MPEP §2111 "The Patent and Trademark Office ('PTO') determines the scope of claims in patent applications not solely on the basis of the claim language, but upon giving claims their broadest reasonable construction in light of the specification as it would be interpreted by one of ordinary skill in the art." (Emphasis added)

Phillips v. AWH Corp., 415 F.3d 1303, 1316 (Fed. Cir. 2005)

Claim 26 requires that "wire waves are longitudinally nested within each other."

The following language is included in the current application to interpret the term "nested:"

nesting or stacking does occur where the pitch or spacing between longitudinally adjacent windings 24 is less than 2A i.e. the peak-to-peak amplitude. As long as the pitch remains less than 2A each longitudinally adjacent winding 24 will be nested within the waved formed by the previously formed winding 24.

(Emphasis added, para. 0027, see also Figures 4 and 5) Therefore, the term "nested" is explicitly defined in the specification to describe a state that the pitch, i.e. the peak-to-peak amplitude of the longitudinally adjacent windings, is less than $2A$.

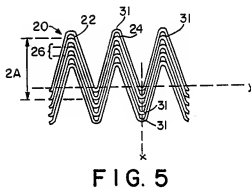
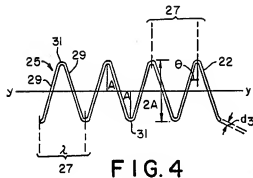
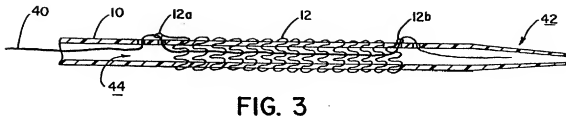


Figure 3 of Hillstead shows a stent comprising bent wire with longitudinally aligned windings. However, Figure 3 of Hillstead fails to show or disclose a peak-to-peak



amplitude of longitudinally adjacent windings that is less than 2A. Therefore, the wire waves in Figure 3 of Hillstead are not "nested" under the meaning of this application in the light of the specification. Applicants can not find any language in Hillstead that teaches or suggests a peak-to-peak amplitude of longitudinally adjacent windings that is less than 2A. Therefore Hillstead fails to disclose "nested" wire waves as required by claim 26. Applicants respectfully request the withdrawal of the rejection.

The amended claim 26 also includes the following language:

the stent having an unexpanded state, the plurality of wire waves comprising a first wire wave and a second wire wave, the first wire wave being longitudinally adjacent to the second wire wave, wherein at least a portion of the first wire wave is in direct contact with at least a portion of the second wire wave in the unexpanded state.

Applicants assert that neither Hillstead nor Kanazawa discloses this limitation. Therefore, claim 26 as amended is in condition for allowance. Claims 27-36 are directly or indirectly dependent over claim 26, and therefore are allowable.

Claim 38

Claim 38 is added in this amendment. Claim 38 describes an intraluminal device for implantation into a body lumen comprising the following limitations, in part: 1) "the peak-to-peak distance is less than two times of the amplitude of at least one of the longitudinally adjacent wire waves;" and 2) "at least a portion of the first wire wave is in direct contact with at least a portion of the second wire wave in the unexpanded state." As discussed above, neither Hillstead nor Kanazawa discloses any of these limitations. Support for these limitations can be found in paragraph 0027, and Figures 4 and 5 in the original application. No new matter has been added.

Conclusion

In view of the preceding arguments, Applicants submit that the Application is in condition for allowance. Favorable consideration and early action to that effect are earnestly solicited.

Should the Examiner believe that anything further would be desirable in order to place this Application in better condition for allowance the Examiner is invited to contact Applicant's undersigned representative at the telephone number listed below.

Respectfully submitted,

VIDAS, ARRETT & STEINKRAUS

Date: June 17, 2010

By: /James M. Urzedowski/
James M. Urzedowski
Registration No.: 48596

6640 Shady Oak Rd., Suite 400
Eden Prairie, MN 55344-7834
Telephone: (952) 563-3000
Facsimile: (952) 563-3001
f:\wpwork\jmu\14438us05_amd_20100524.doc